

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 VICKI NIHART,

5 Plaintiff,

6 v.

7 NATIONAL PARK SERVICE, *et al.*,

8 Defendants.

Case No. 2:12-cv-00291-APG-GWF

ORDER

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10 The Government offered into evidence Defendant's Proposed Exhibit 501, which is a July
11 28, 2011 letter from Vicki Nihart's attorney to the Department of the Interior. The parties agree
12 that this letter satisfies the requirement of the Federal Tort Claim Act that Ms. Nihart must
13 present her claim to the Government before filing a lawsuit. Because there is no dispute about
14 Ms. Nihart's exhaustion of her administrative remedies, the letter has no relevance to that issue.

15 The Government offers the letter, primarily, to contradict Ms. Nihart's claim (and
16 testimony) that the surgery on her left foot hammertoe was causally-connected to the incident and
17 medically necessary. (Dkt. #70 at 2:17-18.) That use is expressly prohibited by Federal Rule of
18 Evidence 408(a). That Rule prohibits the admission of evidence of compromise offers "either to
19 prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent
20 statement or a contradiction." The letter constitutes an offer to compromise. The Government's
21 proposed use falls squarely within the constraints of Rule 408.

22 The fact that the letter is a party admission under Rule 801(d)(2)(C) is irrelevant. Almost
23 every offer to compromise can be considered an admission by a party opponent. The
24 Government's argument on this point would render Rule 408 nugatory. "[W]hen the issue is
25 doubtful, the better practice is to exclude evidence of compromises or compromise offers."
26 *Bradbury v. Phillips Petroleum Co.*, 815 F.2d 1356, 1364 (10th Cir. 1987).

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1 For the foregoing reasons, Defendant's Proposed Exhibit 501 will not be admitted into
2 evidence.

3 Dated: October 2, 2014.

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6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
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